

JINDAL GLOBAL LAW SCHOOL



O.P. JINDAL GLOBAL UNIVERSITY

Research Paper

**“CSR in Times of COVID-19: Notifications issued by the Ministry of
Corporate Affairs with regard to Schedule VII of the Companies Act,
2013”**

By – Aniket Raj

Research Questions - How the Corporate Social Responsibility policies of the Ministry of Corporate Affairs have impacted the COVID-19 situation in the country? What are the notifications issued by the Ministry of Corporate Affairs with regard to Schedule VII of the Companies Act, 2013 and what do they entail? How will COVID-19 change the way we look at the concept of Corporate Social Responsibility?

Research Methodology – The research methodology used in this paper is the doctrinal legal research method. In the doctrinal research method, the research entails analysing the existing case laws, statutes, and secondary sources of information like journals, articles, websites, etc.

Introduction to the idea of Corporate Social Responsibility or CSR

The idea of ‘Corporate Social Responsibility’ or ‘CSR’ in its modern form means the self-regulation of corporations to increase their participation in social and environmental welfare activities.¹ The idea is to create a sense of accountability and responsibility in the corporations, towards the society at large. The idea of ‘Corporate Social Responsibility’ has evolved from the terms like “charity and “philanthropy” which were popularly used terms in the corporate world.² In the recent past with the advent of liberalisation, privatization, and globalisation of the economies throughout the world. These concepts of charity and philanthropy in the corporate sphere has evolved towards a more technical and legal concept of Corporate Social Responsibility, as these loose concepts do not project the response or the involvement that is required and expected from the mighty corporations in the recent developments. The meaning and definition of Corporate Social Responsibility varies according to the defining entity and is reflective of the ideologies, principles, and ambitions of such entity.³ One such definition of CSR as given by the Business for Social Responsibility (BSR) is: “achieving commercial

¹ Atul Sood & Bimal Arora, *The Political Economy of Corporate Responsibility in India*, UNRISD (2006) , https://www.researchgate.net/publication/5219574_A_Review_of_Corporate_Social_Responsibility_in_India.

² *Id.*

³ *Id.*

success in ways that honour ethical values and respect people, communities, and the natural environment”⁴. The rise of capitalism in India and the LPG (Liberalisation, Privatisation, Globalisation) reforms played a vital role in bringing the idea of Corporate Social Responsibility in the field of corporate governance.

The Confederation of Indian Industry (CII) divides the development of CSR in India into 4 phases: In the first phase which can be taken to be around 1850 to 1914 the corporations carried out charitable activities or donations for the social welfare; during the second phase from 1914 to 1960 the corporate environment was gradually being influenced by M. K. Gandhi’s idea of trusteeship due to which issues like rural development, women empowerment, etc started to get attention; India in the third phase during 1960 to 1980 was witnessing a mixed economy where the Public Sector Undertakings (PSUs) were themselves counted as CSR with the government’s regulation of the private businesses also being considered as CSR; in the fourth phase which is from 1980 onwards, India’s economy underwent the liberalisation, privatisation and globalisation reforms, with these reforms CSR was slowly integrated into the business strategy of the corporations, as globalisation brought with itself the concept of CSR as present in the foreign nations.⁵

Corporate Social Responsibility in Indian Law

In the context of Indian law, Rule 2 (1) (c) of the Companies (Corporate Social Responsibility Policy) Rules, 2014⁶ gives an inclusive definition of the concept of ‘Corporate Social Responsibility’ to mean and include but not limited to the projects or programs relating to activities specified in Schedule VII of the Companies Act, 2013, or such activities as

⁴ Business for Social Responsibility (BSA). 2003. Overview of Corporate Responsibility. Issue Brief. www.bsr.org/CSRResources/IssueBriefDetail.cfm?DocumentID=48809.

⁵ *CSR in India A historical perspective PWC CII Arm 2012*, Confederation of Indian Industry (2012), https://www.academia.edu/24763953/CSR_in_India_A_historical_perspective_PWC_CII_Arm_2012.

⁶ F. No. 1/18/2013-CL.V, 28th February 2014, Ministry of Corporate Affairs, https://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf.

undertaken by the Board of Directors of a company on the recommendations of the Corporate Social Responsibility Committee, in accordance with Schedule VII of the Companies Act. India made Corporate Social Responsibility mandatory under the Companies Act, 2013, it is one of the first countries in the world to make CSR mandatory under the law.⁷ Section 135 of the Companies Act, 2013 specifies that every company that has a net worth of Rs. 500 Crores or more, or a turnover of Rs. 1000 Crores or more, or a net profit of Rs. 5 Crores or more in a financial year will have to participate in the Corporate Social Responsibility activities through the constitution of a Corporate Social Responsibility Committee of the Board of Directors. This provision of the Companies Act puts a statutory obligation on the companies that fall under the category as provided in Section 135 itself, to involve themselves and spend certain amounts of their money towards the development and welfare of the society by setting down activities that would count towards this obligation, that is, the Corporate Social Responsibility or CSR activities. Companies that fall under Section 135 of the Act will have to ensure that for each financial year, at least 2 percent of the average net profit earned during the prior 3 years by the company is spent towards the company's eligible Corporate Social Responsibility Policy.

It is not only the legislature that has contributed to the development of CSR as it is today, but the Judiciary has also played a significant role as well. Through the way of Public Interest Litigations (PILs), the judiciary has contributed to Corporate Social Responsibility by making the corporations more responsible towards the environment as well as the social welfare at large, one such landmark case is of *Union Carbide Corporation vs Union Of India*⁸, also popularly called the Bhopal gas tragedy case, where the Hon'ble Supreme Court of India gave

⁷ Sujatha Gurudev et al., *Future Dimension of CSR Post COVID-19*, Chola MS (2020), http://www.cholarisk.com/downloads/Future%20Dimension%20of%20CSR_V2_25th%20June.pdf.

⁸ *Union Carbide Corporation vs Union Of India*, (1989) 2 SCC 540.

priority to the compensation to the victims to ensure their welfare over waiting for long drawn legal proceedings.⁹

Notifications issued by the Ministry of Corporate Affairs for CSR in COVID-19

The Ministry of Corporate Affairs has notified through its General Circular No, 10/2020 on March 23rd, 2020¹⁰ that the expenditure of ‘Corporate Social Responsibility’ or CSR funds for curbing the COVID-19 situation would be considered as a legitimate CSR activity by the Ministry of Corporate Affairs under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013, this also includes contributions made to any State Disaster Management Authority to fight COVID-19. Another notification vide on 28th March 2020 clarifies that any contribution made to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) is an eligible CSR activity under item no. (viii) of Schedule VII of the Companies Act, 2013.¹¹ The Ministry of Corporate Affairs also released a list of Frequently Asked Questions through General Circular No. 15 /2020 dated 10th April 2020¹², in which it clarified that expenditures like the payment of *ex-gratia* to daily wage/temporary workers, in addition to their wages, will be admissible as CSR expenditure as a one-time exception.¹³

The Government of India amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 of the Companies Act, 2013 on 24th August 2020¹⁴, which added the following proviso in clause (e) of sub-rule (1) of rule 2: “Provided that any company engaged in research

⁹ *Supra* note 1.

¹⁰ General Circular-No 10/2020, 23rd March 2020, Ministry of Corporate Affairs, http://www.mca.gov.in/Ministry/pdf/Covid_23032020.pdf.

¹¹ eF. No. CSR-05/1/2020-CSR-MCA, 28th March 2020, Ministry of Corporate Affairs, http://www.mca.gov.in/Ministry/pdf/Circular_29032020.pdf.

¹² General Circular-No15/2020, 10th April 2020, Ministry of Corporate Affairs, http://www.mca.gov.in/Ministry/pdf/Notification_10042020.pdf.

¹³ *Id.*

¹⁴ E- F. No. CSR-07/2/2020-CSR-MCA, 24th August 2020, Ministry of Corporate Affairs, http://www.mca.gov.in/Ministry/pdf/csr_26082020.pdf.

and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the conditions that - (i) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act. (ii) details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board's Report"¹⁵, it further omitted the words "excluding activities undertaken in pursuance of its normal course of business"¹⁶ from Rule 4. Both of these amendments are meant for companies like the pharmaceuticals companies whose *modus operandi* of daily business involves engaging in the research and development of vaccines, drugs, and medical devices for different diseases, through these amendments the Ministry of Corporate Affairs is providing an additional incentive to these companies to focus on the research of COVID-19, by counting the spending towards such research as eligible Corporate Social Responsibility Policies Activities under the Act. Through the same notification, the Ministry of Corporate Affairs also made amendments to Schedule VII of the Companies Act, 2013, by substituting item (ix) to include the contributions made towards research and development initiatives in the field of science, technology, engineering, and medicine that receive funding from either the Central or State Governments, including contributing to public-funded Universities as specified in item (ix) (b).¹⁷ At a time when extensive research is required into the COVID-19 situation, the Ministry of Corporate Affairs through this amendment has made the contributions made by any companies towards the scientific endeavours as an eligible CSR activity.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ E-F. No. CSR-07/2/2020-CSR-MCA, 24th August 2020, Ministry of Corporate Affairs, http://www.mca.gov.in/Ministry/pdf/NotificationCompAct_26082020.pdf.

Challenges and opportunities for the corporate world in times of the pandemic

With the spread of the COVID-19 virus throughout the world, the field of Corporate Social Responsibility is faced with new problems. Corporations have even started using this pandemic as an opportunity for them to exploit the consumers. For instance, in the United Kingdom, the government's competition regulating authority has started initiatives to control this profiteering by the corporations that are exploiting this situation by inflating the prices and making false claims or misleading the consumers about their products.¹⁸ The pandemic has caused a shortage in the resources available to corporations, which adds to the decrease in demand from consumers, consequently, the competition for the corporations to stay afloat through this pandemic has increased exponentially, thus driving them to indulge in unethical activities and compromising their Corporate Social Responsibility commitments.¹⁹ The lockdowns imposed in countries throughout the world, including India, have severely affected the business operations of most of the corporations operating in those places. According to the Business Confidence Survey conducted in April 2020 by the Federation of Indian Chambers of Commerce and Industry (FICCI) among its members, survey discovered that 72% of the companies' business and 90% of their supply chains have been gravely affected due to the COVID-19 pandemic.²⁰ This situation has also proved to be a huge threat to the livelihood of the daily wage workers, the lockdown in India has resulted in these vulnerable workers losing their jobs and has resulted in a migrant crisis within India as these migrant workers attempt to return to their homes with no security about their employments.²¹

¹⁸ Creon Butler, *How to survive the pandemic*, Chatman House: The World Today, 17th April 2020, accessible at: <https://www.chathamhouse.org/publications/twt/how-survive-pandemic>.

¹⁹ Hongwei He & Lloyd Harris, *The impact of Covid-19 pandemic on corporate social responsibility and marketing philosophy*, NCBI (2020) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7241379/>.

²⁰ Business Confidence Survey - April 2020, Federation of Indian Chambers of Commerce and Industry (FICCI), 24th April 2020, <http://ficci.in/Sedocumen t/20499/FICCI-BCS-April-2020.pdf>.

²¹ Chola Risk, *Supra* note 6.

Yet there are also many corporations that are setting a positive example for others to follow. Corporation giants like Audi, Coca Cola and McDonald's, among other such corporations, have taken initiatives to promote social distancing through awareness campaigns, for instance, McDonald's bifurcated its 'm' logo into 'n n' to create social awareness about social distancing.²² Other corporations have also started to spread awareness through their advertisements, and some have also introduced new slogans for the pandemic. In addition to this several companies in India have boosted their contributions to their Corporate Social Responsibility plans, Infosys Foundation has contributed Rs. 50 Crores to the PM CARES Fund (now counted as eligible CSR activity as per FAQ released by the MCA on 28th March 2020) and Rs. 500 crores for providing masks, ventilator, testing kits, etc. and food necessities to the poor (now counted as eligible CSR activity as per the notification released by the MCA on 23rd March 2020), other corporations like Hindustan Unilever Ltd, Reliance Industries Ltd, ITC Ltd, etc have made similar contributions.²³ Futurescape's Responsible Business Rankings released "India's Top Countries for Sustainability and CSR 2020" on the corporate world's response to the COVID-19 initiatives, it was reported that the Top 50 companies in India had till that point had contributed up to Rs. 6,916 crores towards the COVID relief fund like PM CARES Fund, State Disaster Management Authorities Funds, among other such relief funds for COVID-19.²⁴ These contributions by the corporations in India towards the efforts to control the COVID-19 pandemic shows that the notifications issued and the amendments made by the Ministry of Corporate Affairs regarding Corporate Social Responsibility in the COVID-19

²² Sourav Kumar Das & Nilanjan Ray, *Corporate Social Responsibility in times of Covid-19 pandemic*, Economic Times, <https://government.economictimes.indiatimes.com/news/economy/corporate-social-responsibility-in-times-of-covid-19-pandemic/75771467>.

²³ *Id.*

²⁴ Responsible Business Rankings, *India's Top Companies for Sustainability and CSR 2020*, <https://www.futurescape.in/responsible-business-ranking/>.

situation, was successful in encouraging the companies in India to spend more towards the efforts to contain the pandemic.

The COVID-19 situation also has a silver lining for the corporate world. Corporations can take this situation to build a lasting bond of trust with their consumers, as well as with the Government. The Global Research Team of the Bank of America Merrill Lynch (BofAML) released a report that stated “Companies allocating resources to the COVID-19 crisis are likely to foster employee and community goodwill and to enhance brand and reputation all of which have been critical drivers of performance in general and even more so recently.”²⁵ The corporation’s contribution to helping in these difficult times might seem like an expensive task, but it is worth the effort as this will create a positive and reliable image of the corporation. Corporate Social Activities will thus not only help in improving the conditions of the society at large, it will also help the corporations build lasting bonds with the public and enhance their brand loyalty.

The COVID-19 pandemic has brought with it several challenges and has impacted the economy severely, both the organised corporations and the unorganised sector worker like the daily wage workers are facing problems because of it. The Government of India has taken steps to ensure that corporations are working properly throughout this pandemic by issuing notifications and making amendments that encourage the corporations to be involved in the struggle against the pandemic through Corporate Social Responsibility. Yet the Government has done very little to ensure the survival of the daily wage or migrant workers, there is an imminent need for the Government to provide employment opportunity to the workers as there is widespread unemployment in India’s economy under the current circumstances. The pandemic also has produced an opportunity for the development in the field of Corporate Social Responsibility,

²⁵ Tim Human, *Covid-19 response highlights shift to stakeholder value*, 7th April 2020, <https://www.irmagazine.com/covid-19/covid-19-response-highlights-shift-stakeholder-value/>.

and it has been forecasted that those corporations involving themselves in such activities would be rewarded with a positive reaction from their stakeholders towards its brand. So, post – COVID-19 pandemic, the fate of the corporations would depend significantly on the company’s capability to convert a challenge into an opportunity.

Preprint not peer reviewed